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Locke, Liddell & Sapp, LLP  
3400 Chase Tower  
600 Travis Street  
Houston, TX 77002-3095

EXAMINER

SERGEANT, RABON A

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1711

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**MAILED**  
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**GROUP 1700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/928,764  
Filing Date: August 13, 2001  
Appellant(s): PARKS ET AL.

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John Wilson Jones  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 13, 2004 appealing from the Office action mailed March 8, 2004.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on June 10, 2004 has been entered. In view of the Office's relaxed standards concerning acceptable claim status identifiers, the previously unentered amendment of June 10, 2004 has now been entered. Accordingly, the rejection of claim 36 under 35 U.S.C. 112, second paragraph, set forth within paragraph 1 of the final Office action has been withdrawn.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

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A substantially correct copy of appealed claim 36 appears on page 3 of the Appendix to the appellant's brief. The minor errors are as follows: Within line 2 of claim 36, "comprising" should be "comprises". This change is due to entry of the previously unentered amendment after final rejection.

#### **(8) Evidence Relied Upon**

U.S. 5,959,027	Jakubowski et al.	September 28, 1999
U.S. 6,389,602	Alsaffar	May 21, 2002
WO 98/41552	Jakubowski et al.	September 24, 1998
WO 98/41554	Tabor et al.	September 24, 1998
U.S. 4,118,410	Friedel et al.	October 3, 1978
GB 1263439	Fischer	February 9, 1972

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7, 9, 24, 25, and 27-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Jakubowski et al. ('027).

Patentees disclose aqueous polyurethane dispersions, having a solids content and particle size that reads on appellants' claims, suitable for the production of films. Furthermore, patentees disclose that the dispersion is produced, in the absence of solvents, by dispersing a polyurethane prepolymer into water in the presence of a surfactant, such as sodium dodecyl benzene sulfonate. Patentees further disclose the use of 4,4'-MDI and polyol reactants for producing the prepolymer. See abstract, columns 3-5, and examples.

The reference discloses that the diisocyanate reactant is preferably 4,4'-MDI, and the position is taken that appellants' claimed P,P'-isomer content is met by this disclosure, because the processing of 4,4'-MDI inherently yields an insignificant quantity of other isomers; as a result it is reasonable to conclude that the P,P'-isomer (in other words; 4,4'-isomer) content is slightly below 100 percent and meets the appellants' claimed percent values. Appellants have essentially argued that there is no basis for the examiner's position that the 4,4'-MDI reactant of the reference contains the claimed quantity of P,P' isomer. In support of their position, appellants refer to teachings within U.S. 4,118,410 and GB 1,263,439. The examiner has considered these references and appellants' argument, and while these references do disclose how to produce high purity 4,4'-MDI, both references disclose that high purity 4,4'-MDI have a content of 4,4'-isomer of at least 98%. See column 1, lines 21 and 66; column 4, line 19; and column 5, line 67, within U.S. 4,118,410. See page 1, lines 46 and 56; page 2, line 7; and claim

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1, within GB 1,263,439. Since these high purity diisocyanates, having 98% 4,4'-MDI, meet appellants' claimed high isomer content MDI, the position is taken that these evidentiary references support the examiner's position that the 4,4'-MDI reactant of Jakubowski et al. inherently contains the claimed content of P,P'-isomer, as opposed to appellants' position.

With respect to claims 27-29 and 39-41, in view of the latitude afforded by the use of "about", the position is taken that the language, "about 98 percent to about 92 percent", "about 94 percent", and "about 98 percent", is no more limiting than the "99 to 90 percent" language of the independent claims and is met by the reference for the aforementioned reasons.

Claims 1, 5, 7, 9, 24, 25, and 27-41 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 98/41552.

The reference discloses aqueous polyurethane dispersions, having a solids content and particle size that reads on appellants' claims, suitable for the production of films. Furthermore, the reference discloses that the dispersion is produced, in the absence of solvents, by dispersing a polyurethane prepolymer into water in the presence of a surfactant, such as sodium dodecyl benzene sulfonate. The reference further discloses the use of 4,4'-MDI and polyol reactants for producing the prepolymer. See abstract, pages 2-6, and examples.

The reference discloses that the diisocyanate reactant is preferably 4,4'-MDI, and the position is taken that appellants' claimed P,P'-isomer content is met by this disclosure, because the processing of 4,4'-MDI inherently yields an insignificant quantity of other isomers; as a result it is reasonable to conclude that the P,P'-isomer content is slightly below 100 percent and meets the appellants' claimed percent values. Appellants have essentially argued that there is no basis for the examiner's position that the 4,4'-MDI reactant of the reference contains the claimed

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quantity of P,P' isomer. In support of their position, appellants refer to teachings within U.S. 4,118,410 and GB 1,263,439. The examiner has considered these references and appellants' argument, and while these references do disclose how to produce high purity 4,4'-MDI, both references disclose that high purity 4,4'-MDI have a content of 4,4'-isomer of at least 98%. See column 1, lines 21 and 66; column 4, line 19; and column 5, line 67, within U.S. 4,118,410. See page 1, lines 46 and 56; page 2, line 7; and claim 1, within GB 1,263,439. Since these high purity diisocyanates, having 98% 4,4'-MDI, meet appellants' claimed high isomer content MDI, the position is taken that these evidentiary references support the examiner's position that the 4,4'-MDI reactant of WO 98/41552 inherently contains the claimed content of P,P'-isomer, as opposed to appellants' position.

With respect to claims 27-29 and 39-41, in view of the latitude afforded by the use of "about", the position is taken that the language, "about 98 percent to about 92 percent", "about 94 percent", and "about 98 percent", is no more limiting than the "99 to 90 percent" language of the independent claims and is met by the reference for the aforementioned reasons.

Claims 1, 5, 7, 9, 11, 24, 25, and 27-41 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 98/41554.

The reference discloses aqueous polyurethane dispersions, having a solids content and particle size that reads on appellants' claims, suitable for the production of films. Furthermore, the reference discloses that the dispersion is produced, in the absence of solvents, by dispersing a polyurethane prepolymer into water in the presence of a surfactant, such as sodium dodecyl benzene sulfonate. The reference further discloses the use of 4,4'-MDI and polyol reactants for producing the prepolymer. See abstract, pages 4-12, and examples; especially page 10, lines 4,

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5, and 10. Since the number of disclosed isocyanate species for producing the prepolymer is limited and since 4,4'-MDI is specifically recited, the reference is deemed to be anticipatory.

The reference discloses the use of 4,4'-MDI for producing the prepolymer, and the position is taken that appellants' claimed P,P'-isomer content is met by this disclosure, because the processing of 4,4'-MDI inherently yields an insignificant quantity of other isomers; as a result it is reasonable to conclude that the P,P'-isomer content is slightly below 100 percent and meets the appellants' claimed percent values. Appellants have essentially argued that there is no basis for the examiner's position that the 4,4'-MDI reactant of the reference contains the claimed quantity of P,P' isomer. In support of their position, appellants refer to teachings within U.S. 4,118,410 and GB 1,263,439. The examiner has considered these references and appellants' argument, and while these references do disclose how to produce high purity 4,4'-MDI, both references disclose that high purity 4,4'-MDI have a content of 4,4'-isomer of at least 98%. See column 1, lines 21 and 66; column 4, line 19; and column 5, line 67, within U.S. 4,118,410. See page 1, lines 46 and 56; page 2, line 7; and claim 1, within GB 1,263,439. Since these high purity diisocyanates, having 98% 4,4'-MDI, meet appellants' claimed high isomer content MDI, the position is taken that these evidentiary references support the examiner's position that the 4,4'-MDI reactant of WO 98/41554 inherently contains the claimed content of P,P'-isomer, as opposed to appellants' position.

With respect to claims 27-29 and 39-41, in view of the latitude afforded by the use of "about", the position is taken that the language, "about 98 percent to about 92 percent", "about 94 percent", and "about 98 percent", is no more limiting than the "99 to 90 percent" language of the independent claims and is met by the reference for the aforementioned reasons.



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Claims 8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/41552 or WO 98/41554, each in view of Alsaffar ('602).

As aforementioned, the primary references disclose aqueous polyurethane dispersions, having a solids content and particle size that meets appellants' claims, suitable for the production of films. Furthermore, the references disclose that the dispersion is produced, in the absence of solvents, by dispersing a polyurethane prepolymer into water in the presence of a surfactant, such as sodium dodecyl benzene sulfonate. The references further disclose the use of 4,4'-MDI and polyol reactants for producing the prepolymer. Though the primary references disclose the application of the dispersions to substrates and disclose the production of films, the primary references fail to specifically recite the use of the aqueous dispersions to produce items, such as gloves and condoms. However, the use of aqueous dispersions to produce such items was known at the time of invention. This position is supported by the teachings of Alsaffar at column 2, lines 18+. Therefore, it would have been obvious to use the aqueous dispersions of the primary references to produce the items recited within the claims.

Appellants' argued deficiencies with respect to the primary references have been discussed above.

#### **(10) Response to Argument**

Appellants' arguments have been addressed within the **Grounds of Rejection**.


#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
**RABON SERGENT**  
**PRIMARY EXAMINER**

Conferees:

James Seidke   
David Wu 